

40-10B-5. Petition; who may file; contents.

A. A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by:

- (1) a kinship caregiver;
- (2) a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists, who has been nominated to be guardian of the child by the child, and the child has reached the age of fourteen; or
- (3) a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:
 - (a) the purpose and effect of the guardianship;
 - (b) that the parent has the right to be served with the petition and notices of hearings in the action; and
 - (c) that the parent may appear in court to contest the guardianship.

B. A petition seeking the appointment of a guardian shall be verified by the petitioner and allege the following with respect to the child:

- (1) facts that, if proved, will meet the requirements of Subsection B of Section 40-10B-8 NMSA 1978;
- (2) the date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;
- (3) the legal residence of the child and the place where the child resides, if different from the legal residence;
- (4) the name and address of the petitioner;
- (5) the kinship, if any, between the petitioner and the child;
- (6) the names and addresses of the parents of the child;
- (7) the names and addresses of persons having legal custody of the child;
- (8) the existence of any matters pending involving the custody of the child;
- (9) a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;
- (10) the existence of any matters pending pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978 and, if so, a statement that the children, youth and families department consents to the relief requested in the petition;
- (11) whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978 and, if so:
 - (a) the tribal affiliations of the child's parents; and
 - (b) the specific actions taken by the petitioner to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted, and copies of correspondence with the tribe; and
- (12) other facts in support of the guardianship sought.

History: Laws 2001, ch. 167, § 5; 2015, ch. 28, § 1.